

BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

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POSTAL RATE AND FEE CHANGES, 2000

Docket No. R2000-1

DOUGLAS F. CARLSON
INITIAL BRIEF

September 11, 2000

I hereby submit my initial brief for Docket No. R2000-1.

Respectfully submitted,



DOUGLAS F. CARLSON

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the required participants of record in accordance with section 12 of the *Rules of Practice*.



DOUGLAS F. CARLSON

September 11, 2000
Emeryville, California

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I. PRIORITY MAIL

In Docket No. R90-1, the Commission recommended a rate for a new Priority Mail flat-rate envelope. PRC Op. R90-1 at V-98, ¶ 5221. The Postal Service supplies the envelope, and the flat rate applies regardless of the weight of the envelope.¹ In Docket No. R90-1, the Commission recommended the lowest Priority Mail rate for the flat-rate envelope. At that time, the lowest Priority Mail rate was the two-pound rate. Tr. 7/2755.

In this docket, the Postal Service proposes a new one-pound rate for Priority Mail. USPS-T-34 at 15–16. However, flat-rate envelopes would pay the two-pound rate, not the one-pound rate. USPS-T-34 at 9.

Most flat-rate envelopes weigh one pound or less. The Postal Service has failed to produce substantial record evidence supporting its proposal to charge the two-pound rate, rather than the one-pound rate, for Priority Mail flat-rate envelopes. The Commission should recommend the one-pound rate for Priority Mail flat-rate envelopes.

In addition, evidence in this proceeding reveals that the Postal Service systematically provides misleading information to customers at retail counters on service standards for First-Class Mail and Priority Mail, consistently suggesting that lower-priced services have slower service standards than they actually do. The Commission should recommend that the Postal Service immediately cease these deceptive business practices.

Finally, to increase the value of Priority Mail service, the Commission should recommend that the Postal Service provide locations and posted collection times of collection boxes on the Postal Service Web site, as competitors such as UPS and FedEx already do.

A. THE POSTAL SERVICE HAS FAILED TO JUSTIFY CHARGING THE TWO-POUND RATE FOR PRIORITY MAIL FLAT-RATE ENVELOPES.

1. Most flat-rate envelopes weigh one pound or less.

Postal Service data show that 77 percent of all flat-rate envelopes weigh one pound or less. Tr. 7/2754. Nearly 29 percent weigh three ounces or less, thus indicating that customers frequently use flat-rate envelopes for light-weight mail that otherwise would qualify as regular First-Class Mail. *Id.* The average weight of flat-rate

¹ The Postal Service offers two Priority Mail flat-rate envelopes. Envelope EP-14F measures 9½" x 12½", while envelope EP-14B measures 6" x 10". Tr. 7/2762.

envelopes that weigh one pound or less is 10.27 ounces. USPS-T-34 at Attachment C, page 1.

Moreover, of all flat-rate envelopes that weigh more than one pound, the average weight is only 22.89 ounces. USPS-T-34 at Attachment C, page 1. Thus, an overwhelming majority of flat-rate envelopes weighs one pound or less, and those flat-rate envelopes that weigh over one pound weigh, on average, less than seven ounces over one pound. Existing data confirm that the one-pound rate is the appropriate rate for Priority Mail flat-rate envelopes.

Applying the one-pound rate to flat-rate envelopes would permit customers mailing flat-rate envelopes weighing over one pound to benefit from weight averaging. This weight averaging would be fair because the Postal Service benefits — and customers suffer — significantly from weight averaging at the opposite end: nearly 29 percent of flat-rate envelopes weigh three ounces or less, yet these envelopes currently pay the two-pound rate. Light-weight flat-rate envelopes typically are less costly to transport than heavier envelopes, Tr. 21/8877, so light-weight flat-rate envelopes would continue to pay a significant markup even if the one-pound rate applied to flat-rate envelopes. The weight averaging that would result from applying the one-pound rate to flat-rate envelopes would be fair and reasonable.

Flat-rate envelopes may actually be less expensive to process than weight-rated Priority Mail of comparable weight because most flat-rate envelopes can be processed as flats. The Commission should encourage the Postal Service to collect data on processing costs of flat-rate envelopes for the next rate case.

2. The Postal Service's only plausible argument against applying the one-pound rate to flat-rate envelopes is unpersuasive.

In response to a presiding officer's information request inquiring into the rationale behind setting the rate for flat-rate envelopes at the two-pound rate, witness Robinson testified that "over time there would be upward pressure on the one-pound rate as price-sensitive customers mail heavier pieces using the flat-rate envelope to take advantage of the lower rate." Tr. 46, Response to POIR No. 5, Question 7. While this argument may have superficial appeal, it collapses under close examination.

If the Commission applies the one-pound rate to flat-rate envelopes, some customers surely will migrate from weight-rated Priority Mail in their own packaging to the flat-rate envelope. However, for several reasons, the effect of this migration on the one-pound rate will be minimal.

First, flat-rate envelopes are useful only for documents and other matter that does not require padded protection. Of all flat-rate envelopes that weigh more than one pound (including those weighing over two pounds), the average weight is only 22.89 ounces. USPS-T-34 at Attachment C, page 1. This average weight likely represents an upper limit on the capacity of flat-rate envelopes. Flat-rate envelopes do not hold more than an average of 22.89 ounces. If they did, customers would be using flat-rate envelopes for heavy items to take advantage of the existing rate advantage for flat-rate envelopes weighing more than two pounds, and the average weight would not be 22.89 ounces. This upper limit is not likely to change: no matter how attractive the rate may be for flat-rate envelopes, the envelopes have a fixed capacity that will not increase. Thus, the average weight of flat-rate envelopes that weigh over one pound is likely to remain close to 22.89 ounces even if applying the one-pound rate to flat-rate envelopes causes some weight-rated Priority Mail to migrate to flat-rate envelopes.

Second, the only migration necessary to analyze is migration of weight-rated Priority Mail weighing 16.001 ounces to 32 ounces, as some of these customers might use a flat-rate envelope to capture the new rate advantage. Customers mailing Priority Mail that weighs over 32 ounces already have a price incentive to use a flat-rate envelope and cap their rate at the two-pound rate. If the one-pound rate applied to Priority Mail flat-rate envelopes, customers mailing Priority Mail that weighs over two pounds would continue their current behavior, using the flat-rate envelope if their mail somehow would fit safely into the envelope, and using weight-rated Priority Mail if their mail would not fit into a flat-rate envelope. The average weight of 22.89 ounces for Priority Mail flat-rate envelopes that weigh over one pound already takes into account the customers who use flat-rate envelopes for mail that weighs over two pounds. Therefore, this average weight is not likely to change.

Third, the average weight of flat-rate envelopes that weigh 16.001 ounces to 32 ounces — the crucial weight range that might put upward pressure on the one-pound rate — is, by mathematical necessity, less than 22.89 ounces. The reason is simple. The average weight of flat-rate envelopes weighing *over one pound* is 22.89 ounces. This average includes the flat-rate envelopes that weigh more than two pounds. Nearly 20 percent of the flat-rate envelopes weighing over one pound weigh more than two pounds. See USPS-LR-I-165, Priority Mail Pricing Spreadsheets, worksheet “Input Data,” cell range B120:E153. Removing the flat-rate envelopes that weigh more than two pounds necessarily will lower the average weight of flat-rate envelopes that weigh 16.001 ounces to 32 ounces. This average weight is the weight that might put upward pressure on the one-pound rate.

For example, the average of the numbers 17, 19, and 42 is 26. If the number 42 is removed, the average of the remaining numbers, 17 and 19, drops to 18. Detailed data are not available to allow calculation of the average weight of this crucial range, but 22.89 ounces clearly overstates the average weight of flat-rate envelopes that weigh 16.001 ounces to 32 ounces. For purposes of further analysis, I will assume — very conservatively — that the average weight is as high as 22 ounces.

The fourth factor undermining witness Robinson's suggestion is the tiny volume of Priority Mail flat-rate envelopes as a proportion of total Priority Mail volume. Only 5.49 percent of Priority Mail weighing 16.001 ounces to 32 ounces travels in a flat-rate envelope. See *Id.* Fully 94.51 percent of Priority Mail in this weight range is weight-rated Priority Mail. Due to this low beginning volume, migration of weight-rated Priority Mail weighing 16.001 ounces to 32 ounces to flat-rate envelopes would cause, at most, negligible upward pressure on the one-pound rate. To take an extreme example, suppose that charging the one-pound rate for flat-rate envelopes causes flat-rate-envelope volume between 16.001 ounces and 32 ounces to quadruple. The volume would increase to nearly 22 percent. As explained above, the average weight of these flat-rate envelopes may be as high as 22 ounces. The average weight of weight-rated Priority Mail weighing 16 ounces or less is 11.73 ounces. See *Id.* at cell range B120:E135. The amount by which 22 ounces exceeds 11.73 ounces — 10.27 ounces — is the amount by which 22-ounce flat-rate envelopes would place upward pressure on the one-pound rate. However, since flat-rate envelopes would constitute only 22 percent of flat-rate-envelope volume under this extreme example, the upward pressure overall on the one-pound rate would be only 2.25 ounces: 11.73 ounces \times 22 percent = 2.25 ounces.

For two reasons, the actual upward pressure on the one-pound rate is likely to be well less than 2.25 ounces. First, I assumed that the average weight of flat-rate envelopes weighing 16.001 ounces to 32 ounces dropped from 22.89 to 22 ounces when flat-rate envelopes weighing over 32 ounces were removed from the average. In reality, the average probably would drop significantly more than 0.89 ounces. Second, flat-rate-envelope volume in the range from 16.001 ounces to 32 ounces would not likely quadruple because envelope size limits the capacity of flat-rate envelopes. Much Priority Mail weighing between 16.001 ounces and 32 ounces probably would not fit safely in a flat-rate envelope. Consequently, if the average weight dropped to 20 ounces and the volume only doubled, the upward pressure would be only 0.91 ounces.²

² Twenty ounces exceeds 11.73 ounces by 8.27 ounces. The proportion of flat-rate envelopes would double from 5.49 percent to 10.98 percent. 8.27 ounces \times 10.98% = 0.91 ounces, so the upward

The upward pressure on the one-pound rate, whether it is 2.25 ounces, 0.91 ounces, or a lower number, clearly is no cause for alarm. Weight averaging would be fair and equitable for customers — nearly 29 percent of whom send flat-rate envelopes that weigh three ounces or less — and it would cause no significant upward pressure on the one-pound rate. And to the extent that upward pressure on the order of an ounce or two occurred, the one-pound rate could be adjusted in a future omnibus rate case. No need exists to overcharge customers who mail flat-rate envelopes simply to protect against a speculative threat of dangerous upward pressure on the one-pound rate. Weight averaging should benefit customers as much as possible, not hurt them.

In summary:

1. The size and capacity of flat-rate envelopes limit their weight. The current average weight of flat-rate envelopes weighing over one pound, 22.89 ounces, is not likely to change.
2. The only potential migration to flat-rate envelopes that needs to be analyzed is weight-rated Priority Mail that weighs 16.001 ounces to 32 ounces.
3. The average weight of flat-rate envelopes that weigh 16.001 ounces to 32 ounces is less than 22.89 ounces because 22.89 ounces includes the weight of flat-rate envelopes that weigh over two pounds — 20 percent of the volume.
4. Only 5.49 percent of Priority Mail volume weighing 16.001 ounces to 32 ounces travels in a flat-rate envelope. These flat-rate envelopes weigh, on average, only ounces over a pound. This upward pressure on the one-pound rate, when multiplied by the extremely low proportion of flat-rate envelopes, would practically disappear. Therefore, upward pressure on the one-pound rate is not cause for alarm.
5. Customers should not be penalized in advance for upward pressure that probably will not occur. Rather, customers who use flat-rate envelopes should benefit from weight-averaging. If upward pressure on the one-pound rate does occur, the one-pound rate should be raised in a future rate case. Even after an adjustment, customers would still be better off than they would be if the two-pound rate applied to flat-rate envelopes.

pressure on total Priority Mail volume in the weight range from 16.001 ounces to 32 ounces would be 0.91 ounces.

3. The flat rate provides little value to customers.

In response to the presiding officer's information request, witness Robinson tried to justify applying the two-pound rate to flat-rate envelopes by claiming that customers derive value from the absence of the need to weigh their flat-rate envelopes. Tr. 46, POIR No. 5, Question 7. This argument is unpersuasive.

When the Commission approved the flat-rate envelope in Docket No. R90-1, the Postal Service permitted customers to deposit any Priority Mail in collection boxes. Now, however, customers must take stamped Priority Mail that weighs over 16 ounces to a retail window; customers may not use collection boxes. See, e.g., DMM § D100.2.6. If customers mailing flat-rate envelopes using postage stamps have any doubt about the weight of their flat-rate envelopes — the circumstance under which the flat rate might contribute value — they must weigh their envelopes to determine whether they weigh 16 ounces or more. During this weighing process, they could just as easily determine the postage rate, too. The flat rate adds little or no value.

For the following examples, suppose the one-pound rate applies to flat-rate envelopes. If a stamped flat-rate envelope obviously weighs 16 ounces or less, the customer will not need to weigh it to be sure that it does not exceed 16 ounces. In this case the customer also will derive no value from the flat-rate aspect of the flat-rate envelope: if the article clearly weighs 16 ounces or less, the customer also will automatically know the rate — the one-pound Priority Mail rate. A customer might derive value from the flat-rate aspect of the flat-rate envelope only for stamped flat-rate envelopes that so obviously weigh more than one pound that the customer can determine, without using a scale, that the envelope weighs more than 16 ounces. Unfortunately, the customer must present this envelope at a post office. Since the customer probably will visit a window clerk, the customer could just as easily have the window clerk weigh, rate, and apply postage to the envelope. Again, the flat rate adds little or no value.

In sum, customers using postage stamps to mail flat-rate envelopes probably derive little, if any, value from the flat-rate aspect of flat-rate envelopes.

Customers who use postage meters may derive some value in those cases where the customer cannot determine, without using a scale, whether the flat-rate envelope weighs just over one pound or just under one pound. However, unlike customers who pay postage with adhesive stamps, customers who have postage meters are likely also to have scales. Therefore, the value of the flat-rate aspect of flat-rate envelopes to customers who send metered mail is questionable. In any event, the

value in no way approaches 40 cents, the difference between the one-pound rate and the two-pound rate. Moreover, the Postal Service has not documented or measured this value.

Security restrictions on deposit of mail in collection boxes have destroyed most of the value that may have been associated with the flat-rate aspect of flat-rate envelopes. Given the changed conditions since the Commission recommended a rate for flat-rate envelopes in Docket No. R90-1, the Commission should reject the Postal Service's claim that customers should pay an increased rate for the convenience of the flat-rate aspect of flat-rate envelopes.

4. Customer confusion will result if the two-pound rate applies to flat-rate envelopes.

Customers are conditioned to pick up a flat-rate envelope and insert a few documents — or even a previously prepared #10 envelope — into the flat-rate envelope. The statistics prove it, as nearly 29 percent of flat-rate envelopes weigh three ounces or less. If the Commission recommends a new one-pound rate but endorses the Postal Service's proposal to charge the two-pound rate for flat-rate envelopes, customers who take a familiar flat-rate envelope from the display at the post office will unfairly pay an extra 40 cents. I cannot envision an implementation procedure that would eliminate customer confusion.

For example, the Postal Service could issue an envelope identical to the popular 9½" x 12½" EP-14F flat-rate envelope, except the new envelope would not qualify for the flat rate. (The Postal Service is considering producing such a new envelope. Tr. 7/2872.) Unfortunately, the Postal Service would then need to stock two envelopes that probably would have a similar appearance. Customers likely would pick up one envelope or the other at lobby displays, unintentionally using a flat-rate envelope for light-weight mail or, for heavy mail, trying to mail the non-flat-rate envelope at the flat rate. Some post offices do a poor job of stocking supplies, particularly in their self-service lobbies, so post offices that provided only one envelope would create customer confusion. For example, if the only envelope available in the lobby was the flat-rate envelope, a customer seeking to mail a light-weight Priority Mail article would unfairly pay an extra 40 cents simply because the post office did not have the non-flat-rate envelope. Alternatively, if only the non-flat-rate envelope were available in the lobby, a customer seeking to use a flat-rate envelope would pay the Priority Mail rate based on weight.

Adding a non-flat-rate envelope would lead to customer confusion because, in practice, the Postal Service would fail to make each envelope available to all customers; therefore, many customers would be overcharged when they picked up the wrong envelope or when the flat-rate envelope was not available. The Postal Service would need to perform significant consumer education as well to inform customers of the new packaging options. In reality, consumers surely would prefer to be able to use a single envelope. If the Postal Service's market research in Docket No. R97-1 is correct in suggesting that consumers would not like Courtesy Envelope Mail because, despite the discount opportunity, CEM would create a two-stamp system, consumers probably would not like a two-envelope system for Priority Mail, either.

The Postal Service also might opt to make no changes. Under this scenario, customers who have been conditioned to use the flat-rate envelopes would continue to use the flat-rate envelopes for their lightweight mail, and they would pay an extra 40 cents in postage for no added convenience. Since the flat-rate envelopes do not cost the Postal Service 40 cents to manufacture, and since most customers gain no value or convenience from the flat-rate aspect of flat-rate envelopes, pricing flat-rate envelopes so far above cost would be unjustified under the statutory pricing criteria.

Without a non-flat-rate envelope similar in size to the popular EP-14F flat-rate envelope, to take advantage of the new one-pound rate customers would have to use other Priority Mail packaging that would be less appropriate for their mail, particularly if they were sending documents. In fact, some customers would save 40 cents by placing their documents in a flat-rate envelope (for stiffness) and then inserting the flat-rate envelope into a Tyvek (non-flat-rate) envelope and paying the one-pound rate. Tr. 21/8557. Postage rates should not be constructed to encourage inefficient consumer behavior.

Producing no new Priority Mail envelopes is not the answer. However, producing a non-flat-rate envelope also might create more problems than it would solve. The clear solution to eliminate confusion and inefficient consumer behavior is to apply the one-pound rate to flat-rate envelopes. Implementation problems will disappear, as customers will be rewarded for continuing the behavior to which they are accustomed, and the Postal Service will not incur the expense of supporting another line of Priority Mail packaging. In addition, the Postal Service would avoid the extensive retraining of window clerks that would be necessary to implement the current proposal properly.

As explained in section I.A.2, *supra*, data analysis proves that the one-pound rate is the logical rate for flat-rate envelopes. The present discussion explains practical pitfalls in charging the two-pound rate for flat-rate envelopes. A two-envelope system

surely would be inconsistent with Criterion 7, which requires simplicity, not complexity, in the rate schedule. The Commission should avert these problems by recommending the one-pound rate for flat-rate envelopes.

5. The rate for flat-rate envelopes will be consistent with statutory pricing criteria only if the one-pound rate, not the two-pound rate, applies.

Since most flat-rate envelopes weigh one pound or less, the one-pound rate provides the fair and equitable rate for flat-rate envelopes (Criterion 1). Because the flat-rate aspect of flat-rate envelopes adds little value to flat-rate envelopes (*see* section I.A.3, *supra*), customers should pay the rate closest to the rate that would apply if their Priority Mail were weight-rated. In other words, the value (Criterion 2) of the flat-rate aspect of flat-rate envelopes is not high enough to justify an additional 40 cents (\$3.85 versus \$3.45) for flat-rate envelopes.

Most flat-rate envelopes do not incur the costs that two-pound Priority Mail incurs, so Criterion 3 suggests that the one-pound rate should apply. Indeed, flat-rate envelopes may be even *less* expensive to process than parcels since they can be processed as flats.

A rate increase of 65 cents for flat-rate envelopes would have a negative effect on the general public, particularly since most flat-rate envelopes weigh one pound or less.

Finally, Priority Mail services would be anything but simple (Criterion 7) if customers were required to choose between flat-rate envelopes and a new non-flat-rate envelope of the type that the Postal Service might design. *See* Tr. 7/2872. Simplicity dictates use of a single envelope — a flat-rate envelope — to which the one-pound rate applies.

B. THE POSTAL SERVICE COULD INCREASE THE VALUE OF PRIORITY MAIL SERVICE BY POSTING LOCATIONS AND COLLECTION TIMES OF COLLECTION BOXES ON ITS WEB SITE.

Customers benefit from knowing the locations and posted collection times of collection boxes, as this information increases the convenience of postal services. Collection boxes are an important method by which customers induct Priority Mail into the postal system. The convenience of collection locations and posted collection times is directly proportional to the value of Priority Mail service.

As witness Haldi confirmed, the Web sites of FedEx and UPS provide locations and collection times of collection boxes, a map of collection-box locations, the distance from an address to particular collection boxes, and maps that allow customers to scroll in any direction to locate, on the map, other collection boxes. Tr. 46, DFC/APMU-T1-2. These Web sites provide this information in a module that allows searches by address, city, or ZIP Code. *Id.* The UPS Web site even provides driving directions to collection boxes. *Id.* In contrast, the Postal Service Web site does not provide information on collection-box locations or posted collection times.

Witness Haldi testified that the "immediate access to information from UPS, FedEx, and other postal competitors regarding the location and the last drop-off time for nearby collection boxes * * * substantially enhances the value of competitors' expedited services vis-a-vis Priority Mail." *Id.* To improve service to the public and increase the value of Priority Mail, the Commission should urge the Postal Service to provide locations and posted collection times of collection boxes on the Postal Service Web site.

II. CERTIFIED MAIL AND RETURN RECEIPT

Certified mail provides customers with a record of delivery and an optional postmarked mailing receipt. The current fee is \$1.40. The Postal Service proposes a new fee of \$2.10.

Return receipt provides customers with a receipt indicating the date of delivery and the signature of the person to whom the mail piece was delivered. The return receipt also is supposed to show the printed name of the recipient. If the mail piece was delivered to an address different from the one to which the mail piece was addressed, the return receipt should indicate the new address. If the mail piece was delivered to the same address to which it was addressed, the delivery employee is supposed to check a box in section D indicating that the address has not changed. As discussed below, the Postal Service has not trained employees on completing the newly redesigned return-receipt form.

For unclear reasons, return receipt is not available as a standalone service. Rather, customers must purchase certified mail, registered mail, insured mail (over \$50), COD, or Express Mail before they are eligible to purchase a return receipt. The current fee is \$1.25. The Postal Service proposes a fee increase to \$1.50.

Many postal customers who need proof of delivery purchase certified mail plus return receipt. In fact, 82 percent of certified-mail articles had a return receipt attached. USPS-T-39 at 41. The current total fee is \$2.65 (plus postage). If the Commission

recommends the fees the Postal Service has proposed, the new total fee will be \$3.60 (plus postage), a staggering 36-percent increase. Unfortunately, customers have no realistic alternatives to certified mail plus return receipt.

Return receipt for merchandise provides every service element that certified mail plus return receipt provide: mailing receipt, record of delivery, and return receipt. Tr. 14/5552. Unlike certified mail, the postmarked mailing receipt for return receipt for merchandise is not optional. Customers of return receipt for merchandise may opt to waive signature upon delivery. Inexplicably, the fee for return receipt for merchandise is only \$1.40, even though it provides the same services as certified mail plus return receipt, for which the total fee is \$2.65. The Postal Service proposes a new fee of \$2.35, still well below the new combined total of \$3.60.

In Docket No. R97-1, intervenor David Popkin and I demonstrated widespread problems with delivery of return-receipt mail to high-volume recipients. I argued that return-receipt service therefore is not a high-value service. The Commission acknowledged the problems with the quality of service and declined to approve the full fee increase that the Postal Service requested. PRC Op. R97-1 at 577, ¶ 5951.

In this case, the Postal Service provided a copy of an Inspection Service audit report from the Northeast Area that reveals problems with delivery of certified and return-receipt mail that are more widespread and systematic than we proved in Docket No. R97-1. USPS-LR-I-200. According to the audit report, customers are not receiving the service for which they paid premium fees. *Id.* at 18. The audit report noted that the problems are nationwide in scope. *Id.* at 22. The Commission must lower the cost coverage for these services even further to reflect the low value of service, as the Postal Service will respond, if at all, only to monetary incentives to correct these problems.

Witness Davis' cost study on return receipt is sorely deficient. Witness Davis failed to perform any statistical tests to ensure the significance of his data. Moreover, even a superficial examination of the data reveals several reasons to be suspicious of the raw data. The Postal Service's cost data in general are suspect, as costs for certified mail have not likely risen 50 percent since Docket No. R97-1.

Finally, witness Davis derives a cost for return receipt that assumes that the Postal Service follows proper procedures in processing every return receipt. Nothing could be further from the truth. A large number of return receipts incurs costs totalling \$0.196 per piece.³ Cost data for return receipt must be discounted by the extent to which postal facilities improperly process return receipts.

³ See discussion in section II.F.2., *infra*.

As described in detail in this section, the Commission should reject or lower the Postal Service's proposed fee increases for certified mail and return receipt.

A. CHARACTERISTICS OF THE SERVICES

1. Certified Mail

Certified mail is accountable mail. The Postal Service maintains a record of delivery at the delivery office. DMM § S912.1.1. This delivery record must show the signature and printed name of the recipient. DMM § D042.1.7(b). In some cases, a recipient may use a rubber stamp instead. DMM § D042.1.7(g). The Postal Service must maintain control over certified mail until the recipient signs the delivery receipt. DMM § D042.1.7(a). Certified mail provides the sender with an optional postmarked mailing receipt as well. DMM § S912.1.1. These features of the service, if followed and actually provided to customers, constitute the value of the service and distinguish certified mail from regular First-Class Mail. The Inspection Service audit report stated that the "key aspect of certified mail" is its "delivery features." USPS-LR-I-200 at 4.

2. Return Receipt

Four distinguishing characteristics comprise the value of return-receipt service:

- By acting as a disinterested third party in confirming the date on which a piece of mail was delivered, the Postal Service removes an opportunity for a recipient to benefit from providing false information about the date of delivery. Tr. 46/___; Docket No. R97-1, Tr. 3/848–50;
- The Postal Service retains possession of the mail piece until the recipient signs the return receipt. Tr. 46/___; Docket No. R97-1, Tr. 3/865;
- The recipient may not open the envelope until the recipient has signed and printed his name on the return receipt and handed the return receipt back to the Postal Service employee (DMM § D042.1.7(b)); and
- *Postal Operations Manual* § 822.112 requires the Postal Service to mail the return receipt back to the sender within one work day after delivery. Tr. 46/___; Docket No. R97-1, Tr. 3/869.

In Docket No. R97-1, witness Plunkett observed that return receipts are used in instances where the relationship between the sender and recipient is not cordial. Tr. 46/___; Docket No. R97-1, Tr. 3/848–49. Therefore, the value of the objective

information that the Postal Service provides as a disinterested third party certainly is “non-trivial.” Tr. 46/___; Docket No. R97-1, Tr. 3/848–49.

For these four reasons, return receipt, at a fee of \$1.25, is superior to simply enclosing a self-addressed, stamped post card inside the envelope and asking the recipient to sign the post card, indicate the date of delivery and the address of delivery (if the address was different), and mail the post card back to the sender promptly. The Inspection Service audit report concurred with this analysis. The report noted that post offices in six districts in the Northeast Area were not maintaining proper control over return receipts. “This non-service resulted in the customer being overcharged by \$.90 (\$1.10 [the return-receipt fee at that time] – \$.20, postcard fee) for non-completion/non-control of PS Form 3811 [Domestic Return Receipt].” USPS-LR-I-200 at 18–19.

B. SERVICE PROBLEMS

Section II.A. describes postal procedures for delivering certified mail and return receipt — the procedures that constitute the value of these services. The Inspection Service audit report describes how, in many cases, the Postal Service *actually* delivers this mail.

The audit report identified a variety of problems. All problems share a common theme: poor control over accountable mail. Most noteworthy are these problems:

- The Internal Revenue Service Center in Andover, Massachusetts, receives approximately 200,000 pieces of certified mail *daily* during peak tax periods. Mail was delayed two to three days. The IRS did not sign the delivery manifest acknowledging receipt of the mail. Most certified letters had return receipts attached. The Postal Service surrendered the return receipts (Forms 3811) to the IRS. “The IRS would assume custody of PS Forms 3811, endorse the forms, and return them to the Postal Service when they found time available. The Postal Service had no system in place to ensure all PS Forms 3811 rendered to the IRS were returned.” *Id.* at 19.
- For the New York Department of Taxation, the Postal Service delivered certified mail with the return receipts still attached. The department returned the return receipts to the Postal Service “when it was convenient for the Dept. of Taxation. The Postal Service failed to ensure the PS Forms 3811 were signed by the addressee and returned to the sender through the mails.” *Id.* at 20. Mail was delayed as well. *Id.*

- The Postal Service turned over return receipts to recipients in Providence, Rhode Island, Chelsea, Massachusetts, Concord, New Hampshire, and Springfield, Massachusetts. No controls exist. In Chelsea, “[n]either postal management nor craft employees interviewed were able to describe how PS Forms 3811 were endorsed by DOR [the Department of Revenue] and returned to the Postal Service.” *Id.*

The common theme is no control over mail for which customers specifically paid for control. These problems are nationwide in scope, not limited to the Northeast Area. *Id.* at 22. Management noted that the problems are “general in nature and indicative of systemic problems.” *Id.*

Four letters from the Postal Service to intervenor David Popkin buttress the audit report’s conclusion that the problems are nationwide in scope. These letters confirm that the Postal Service employs improper procedures to process return receipts destined to IRS centers in Atlanta, Memphis, Philadelphia, and Cincinnati. Tr. 14/5450, 5452, 5454, and 5456. In Memphis, the Postal Service apparently creates the delivery manifest recording delivery of certified mail based on empty envelopes that the IRS (hopefully) returns to the Postal Service.

C. NO TRAINING ON CHECK-OFF BOX

At the Commission’s recommendation in Docket No. MC96-3, the Postal Service added a box in section D of the return receipt for the delivery employee to check to indicate whether the recipient’s address had changed. See Tr. 14/5528–29. This check-off box was designed to provide the mailer some assurance that the absence of a new address meant that the recipient’s address had not changed, eliminating the possibility that the delivery employee simply forgot to provide the address-correction service. The Commission indicated that this check-off box might add value to return-receipt service. PRC Op. MC96-3 at 111–12.

Unfortunately, the Postal Service did not issue the new return receipt until July 1999. Tr. 14/5476–80. More significantly, the Postal Service issued no communications to the field to alert employees to the new form or to initiate training on completing the new form. See Tr. 14/5476–80, 5508–09, 5524–27, and 5531–32; Tr. 46, DFC/USPS-T39-69 and 77. This inaction demonstrates a total lack of commitment to providing quality service, and the Commission should not be surprised if postal employees are not checking either box when they complete return receipts. The Postal

Service has no information indicating the extent to which employees are completing the redesigned form correctly. Tr. 14/5525 and 14/5533.

D. DECEPTIVE ADVERTISING

Although the Postal Service had full knowledge of widespread problems in delivering accountable mail to tax agencies, the Postal Service nevertheless promoted certified mail and return receipt to customers mailing tax returns. Numerous retail lobby displays appeared in early 2000 advertising certified mail and return receipt for mailing tax returns, even though the Postal Service knew that it was doing virtually nothing on the delivery end to provide customers the advertised service that DMM provisions specify. Tr. 14/5420–23. Even the Inspection Service audit report stated that customers were “not receiving the service as advertised by the Postal Service.” USPS-LR-I-200 at 18. Rather than fix the problem, the Postal Service sought to deceive more customers into purchasing these services, overcharging them for processing costs that the Postal Service would not incur. See section II.F.2, *infra*. The Commission should recommend that the Postal Service cease from advertising certified mail and return receipt until the Postal Service fixes the delivery problems.

E. DIMINISHED VALUE OF SERVICE

These widespread problems with delivery of certified and return-receipt mail decimate the core value of these services. Without accountability, these services are indistinguishable from regular First-Class Mail. Specifically, when the Postal Service fails to obtain the recipient's signature for certified mail, certified mail is virtually worthless if the sender did not elect to obtain a postmarked mailing receipt. If the sender did obtain a postmarked mailing receipt, the sender will have paid for the equivalent of an overpriced certificate of mailing.⁴

For return receipt, when the Postal Service fails to act as a disinterested third party in obtaining the recipient's signature and printed name, providing the date of delivery, indicating whether the recipient's address has changed, and mailing the return receipt back within one day, return-receipt service is no more valuable than a 20-cent post card that the sender could enclose in the envelope with a request to the recipient to sign, date, and mail it back. The Inspection Service concurred with this comparison with a 20-cent post card. See USPS-LR-I-200 at 18–19.

⁴ While the Postal Service charges customers \$1.40 for certified mail, the fee for a certificate of mailing is only \$0.60.

The value of return-receipt service is diminished even further by the Postal Service's failure to educate employees on proper use of the check-off box in section D of the return receipt. See section II.C., *supra*. While this check-off box potentially would add value to the service, PRC Op. MC96-3 at 111–12, the Postal Service has demonstrated its disregard for providing quality service by neglecting to alert employees to the existence of this box or to train them to check the appropriate box. The Postal Service has no evidence indicating the extent to which employees are completing return receipts properly. Tr. 14/5525 and 14/5533. The Postal Service has failed to provide substantial record evidence supporting consideration of this feature as contributing to the value of return-receipt service.

Even witness Mayo admits that service problems for return receipt warrant a lower cost coverage. USPS-T-39 at 135.

Service for certified mail and return receipt is in shambles. The Postal Service is not using the revenue these services generate to provide appropriate staffing levels to ensure that customers receive the service for which they have paid.⁵ Indeed, faced with the Inspection Service audit report detailing the problems, the Postal Service responded for the 2000 tax season by aggressively encouraging customers, via lobby advertising, to use certified mail and return receipt to mail their tax returns. Tr. 14/5420–23.

The Commission represents postal customers' only defense against delivery procedures that amount to a fraud on the American public. The Commission should reduce the cost coverage for certified mail and return receipt. Moreover, the Commission should encourage the Postal Service to cease from deceptive advertising and to rectify these fundamental delivery problems that cheat postal customers. Even the Postal Service's own audit unit noted that customers are "not receiving the service as advertised by the Postal Service." USPS-LR-I-200 at 18.

F. UNRELIABLE COST DATA

1. Witness Davis' cost study is unreliable.

The Postal Service relies on witness Davis' cost calculations to support a fee of \$1.50 for return receipt. The Commission cannot rely on witness Davis' cost study.

Witness Davis estimates a cost of 13.6 cents per return receipt for "clerk review of return receipt." USPS-LR-I-108 (electronic file "return receipt.xls"). Witness Davis

⁵ The Inspection Service noted that revenues received from certified mail are adequate to pay for the resources needed to handle this mail. USPS-LR-I-200 at 23.

uses a survey of 24 post offices to estimate 0.188 minutes per return receipt. The raw data appear at Tr. 14/5796–5802 and are worthy of review.

Several problems render witness Davis' data unfit for the Commission to rely upon for purposes of setting a fee for return receipt. First, witness Davis does not contend that his data from 24 post offices are statistically valid. See Tr. 14/5839, 5868–70, 5872 and 5879. Witness Davis failed to calculate the standard error or a confidence interval for his data. Tr. 14/5868–70 and 5872. The Commission and participants have no idea whether witness Davis' data even come close to representing the actual time that clerks spend reviewing return receipts.

Second, witness Davis' data are suspect on their face. At Tr. 14/5799, witness Davis reported numbers that purport to be the number of return receipts that each of 24 post offices processed each day and the number of minutes spent reviewing the return receipts. However, the data at several facilities are of questionable validity:

- Facility 5 processed a substantial portion of the volume in witness Davis' study — 43 percent.⁶ Yet facility 5's data are suspect because the volume for five of the seven days is an even multiple of 100 — at best, quite a coincidence. The volume for day 2 was slightly more believable, 630. But then the volume on day 4 plunged to zero. The time for each day is always a clean multiple of five.
- Facility 12 also had the convenient experience of processing a number of return receipts that was a multiple of 10 each day. Moreover, the number of minutes always was a multiple of five. Even more troubling, the number of return receipts always was *exactly double* the number of minutes, thus suggesting that the raw data were, at best, approximations whose reliability cannot be verified.
- Facility 25 comprised 17 percent of the data.⁷ At facility 25, the number of return receipts also always was *exactly double* the number of minutes. Thus, return receipts supposedly always required exactly 30 seconds. Most likely, this facility counted the return receipts and used 30 seconds per return receipt to derive the time.
- Witness Davis' data reflect wild variations. For example, on day 6 at his two largest facilities, facility 5 required 0.10 minutes per return receipt, while facility

⁶ Facility 5 accounted for 3,830 return receipts. Witness Davis' study sampled 8,918 return receipts. Tr. 14/5838. Facility 5 processed 43 percent of the return receipts in the study.

⁷ Facility 25 accounted for 1,522 return receipts. Witness Davis' study sampled 8,918 return receipts. *Id.* Facility 25 processed 17 percent of the return receipts in the study.

25 required 0.50 minutes per return receipt — quintuple the number of minutes per return receipt.

- Troubling swings existed even within facilities. At facility 24, the time per return receipt ranged from 3.2 seconds on day 4 to 10.71 seconds on day 6. Tr. 14/5836.
- At facility 17, the time always was five minutes, whether the quantity was 33, 39, 41, 29, 24, or 37.

When quizzed about these problems with his data, witness Davis adopted a standard fallback answer: in an era of budget constraints, reasonable approximations are okay. See, e.g., Tr. 14/5824–25. However, data from facility 5 and facility 25 comprise 60 percent of witness Davis' data. The data from these facilities clearly are approximations, but even witness Davis has no way of knowing whether these approximations are reasonable. Witness Davis refers to a "norm" at Tr. 14/5822, but the norm is elusive given that a majority of his data is based on questionable approximations.

Witness Davis' study disintegrates when one examines the raw data. Not surprisingly, witness Davis provides no documentation supporting the statistical reliability of his data. Therefore, the only conclusion that the Commission can draw from witness Davis' cost study is that the study is unsuitable for national postal ratemaking. This study does not constitute substantial record evidence in support of a proposed fee of \$1.50 for return receipt.

2. Postal Service cost data erroneously assume that the Postal Service processes return receipts properly and incurs costs associated with proper processing.

In determining the cost for return-receipt transactions, witness Davis pretends that postal employees follow proper procedures in processing return receipts. Tr. 14/5789. Thus, the cost that witness Davis assigns to every return receipt includes functions such as delivery, clerk review of return receipts, and carrier waiting for review of return receipts. The Inspection Service audit report, however, reveals widespread disregard for proper procedures in processing return receipts. In many cases, the Postal Service incurs no costs for return receipts except the cost of printing the return-receipt card and the mail-processing cost of returning the return receipt — a total cost of \$0.196. See USPS-LR-I-108. Given the large volume of return receipts being processed improperly — over 200,000 per day at a *single* facility during peak tax season — witness Davis' cost study overestimates the cost of processing return

receipts. USPS-LR-I-200 at 19. Return-receipt costs must be discounted for the processing that the Postal Service fails to perform for a significant portion of return-receipt volume.

G. COST DATA FOR CERTIFIED MAIL, RETURN RECEIPT, AND RETURN RECEIPT FOR MERCHANDISE ARE ILLOGICAL.

The Commission should question the Postal Service's cost data for certified mail, return receipt, and return receipt for merchandise.

Return receipt for merchandise provides *every service element* that certified mail plus return receipt provide: mailing receipt, record of delivery, and return receipt. Tr. 14/5552. Unlike certified mail, the postmarked mailing receipt for return receipt for merchandise is not optional. Customers of return receipt for merchandise may opt to waive signature upon delivery. DMM § 917.2.2(f).

Customers who mail documents via First-Class Mail using certified mail plus return receipt pay \$1.40 for certified mail and \$1.25 for return receipt for a total of \$2.65 (plus postage). This fee total would increase to \$3.60. However, return receipt for merchandise, which provides the *same set of services as certified mail plus return receipt*, sells for a fee of only \$1.40. The Postal Service proposes an increase to \$2.35 for return receipt for merchandise, but this new fee still will be \$1.25 lower than the new fee for certified mail plus return receipt, \$3.60. The question is obvious: How can the fee for certified mail plus return receipt be \$1.25 more than the fee for return receipt for merchandise given that certified mail plus return receipt provide the same services as return receipt for merchandise? The low fee for return receipt for merchandise suggests that the Postal Service overstates the cost for certified mail and return receipt. This anomaly provides further evidence to doubt the reliability of the cost data for certified mail and return receipt, as the relationship between these fees is illogical.

H. THE PROPOSED FEE INCREASES ARE INCONSISTENT WITH THE STATUTORY PRICING CRITERIA.

Postal customers using regular First-Class Mail have no reasonable alternatives to obtain the services that certified mail and return receipt provide. Therefore, under Criterion 5 the Commission must protect the public from the large fee increases that the Postal Service has proposed. Similarly, under Criterion 4, the effect on the general public of a large fee increase for certified mail and return receipt would be decidedly negative. This fee increase would harm individuals and businesses who rely on certified

mail and return receipt to send important documents where proof of mailing or delivery may not only be prudent but also legally required.

Finally, as discussed in section II.E., *supra*, in many instances service problems create a low value of service for return receipt and certified mail. Under Criterion 2, the cost coverage for each service is too high, and the Commission should lower it.

III. POST CARDS AND STAMPED CARDS

The Postal Service proposes an increase in the rate for single-piece post cards from 20 cents to 21 cents. USPS-T-33 at 38–39. The Postal Service also proposes a 100-percent increase in the fee for stamped cards from one cent to two cents. USPS-T-39 at 149. I oppose these increases.

The Commission has observed that the mail-processing costs are lower for stamped cards than for private post cards because of physical differences between the types of cards. PRC Op. R97-1 at 594, ¶ 6004. Nonetheless, users of stamped cards currently pay 21 cents to purchase and mail a stamped card,⁸ while customers who mail private post cards pay only 20 cents. Based on a new manufacturing cost of \$0.014 per stamped card, witness Mayo proposes a two-cent fee for stamped cards. USPS-T-39 at 150. If the Commission accepts the Postal Service's proposal, the total rate and fee for stamped cards will be 23 cents, while the rate for private post cards will be 21 cents — even though the typical private post card incurs higher mail-processing costs than the typical stamped card.

The Commission should hold the fee for stamped cards at one cent because stamped cards unfairly subsidize the larger cards subclass. Maintaining a one-cent fee will lead to greater fairness and equity (Criterion 1) than a two-cent fee would.

The Commission should hold the rate for single-piece post cards at 20 cents. In Docket No. R97-1, the Commission acknowledged the importance of maintaining “at least one relatively inexpensive postal category that can be widely used by the general public, businesses, and organizations.” *Id.* at 349, ¶ 5269. In holding the rate at 20 cents, the Commission also noted the “somewhat more limited value of service * * * that cards offer, especially in terms of privacy.” *Id.* at 350, ¶ 5271. This analysis holds in this docket as well.

In addition, the Postal Service's own EXFC data reveal that delivery performance for post cards is lower than it is for letters. For example, in 1999, letters were delivered

⁸ The post-card rate is 20 cents, and the stamped-card fee is one cent.

on time 90.19 percent of the time, while cards were delivered on time only 85.85 percent of the time. Tr. 46, DFC/USPS-70, Attachment 1. Cards were delivered on time only 82.52 percent of the time in 1998, compared to on-time performance of 87.84 percent for letters. *Id.* In terms of delivery performance, cards have a lower value of service than letters. Performance data support holding the rate for single-piece cards at 20 cents.

IV. PROPOSED DISCOUNT FOR METERED MAIL

Pitney Bowes witness Haldi proposes a one-cent discount for metered mail. Tr. 29/13893. Witness Haldi provides persuasive justification for this discount based on the costs associated with postage-stamp distribution and sales that metered mail avoids.

This rate would be fair and equitable because, in the late 1990's, the Postal Service required customers using mechanical postage meters to upgrade to electronic postage meters — and to reset their meters by telephone, rather than taking their meters to the post office. Only eight percent of postal customers may reset their meters at the post office. Tr. 46, DFC/USPS-PB-2. Customers now must pay a fee for resetting their meters by telephone, Tr. 46, DFC/USPS-PB-1, whereas meter resets at the post office were free. The Postal Service effectively has shifted this cost to meter customers. Given that meter customers have absorbed the cost of resetting postage meters, fairness and equity demand that meter customers receive a discount for the costs associated with stamp production and distribution that metered mail avoids. The Commission should recommend this discount.

V. PROPOSED DISCOUNT FOR IBIP MAIL

I oppose the discount that E-Stamp and Stamps.com have proposed for IBIP mail.

A. IBIP MAIL IS NOT SUFFICIENTLY DISTINCTIVE TO JUSTIFY A DISCOUNT.

Many postal customers send non-courtesy-reply single-piece First-Class letters that are fully automation-compatible because the addresses are typewritten or computer-printed. Often these letters have delivery-point bar codes as well. When these letters pass through an AFCS, the AFCS directs these letters to the stackers for typewritten mail. This mail typically proceeds to an MLOCR. The MLOCR will resolve

the address and spray a bar code, or the MLOCR will read the bar code that appears on the envelope. See USPS-RT-15 at 29–30.

IBIP mail has either a FIM “D” printed on the envelope or a fluorescent label applied to the envelope that shows the postage indicia. Typewritten FIM “D” mail and typewritten mail bearing a fluorescent postage label both are sorted to the stackers on the AFCS for typewritten mail, not the stackers for pre-bar-coded mail. See USPS-RT-15 at 29. Both IBIP mail and other typewritten mail then are processed on an MLOCR. So far, then, the mail-processing costs for IBIP mail and regular typewritten mail are *identical*. Only if the MLOCR cannot resolve an address on a typewritten letter may IBIP mail gain a cost advantage in mail processing.

IBIP mail should not receive a discount when a substantial percentage of postal customers is preparing mail that incurs the same mail-processing costs as IBIP mail. E-Stamp and Stamps.com have not made a case for de-averaging First-Class Mail rates to allow IBIP customers, but not non-IBIP customers, to enjoy these cost-savings from preparing automation-compatible mail.

IBIP mail may have cleaner addresses than regular typewritten mail, so theoretically IBIP mail may be less expensive to process in this regard. However, even there, Stamps.com overstates the ability of its software to eliminate delivery-line addressing errors. Witness Heselton claims that “IBIP mail contains no address deficiencies in the delivery line or city/state/ZIP line.” 23/10470. This statement is untrue. In reality, the Postal Service database against which Stamps.com software checks addresses will allow Stamps.com customers to print invalid street numbers that fall within valid street number *ranges*. See Tr. 46, DFC/USPS-105 and 23/10501. Thus, even IBIP mail is not free of delivery-line addressing errors.

Given that a large quantity of single-piece First-Class letters is just as inexpensive to process as IBIP mail, E-Stamp and Stamps.com have failed to provide sufficient data and analysis to justify de-averaging First-Class Mail rates to create a discount for IBIP mail. IBIP mail is not sufficiently distinctive to justify a discount. And to the extent that IBIP mail is distinctive, E-Stamp and Stamps.com have failed to analyze correctly the cost savings associated with the ways in which their mail is distinctive.

B. THE IBIP DISCOUNT PROPOSAL RAISES A SIGNIFICANT QUESTION OF PUBLIC POLICY.

More than any other category of mail, individuals and small businesses rely on single-piece First-Class Mail. Therefore, single-piece First Class Mail deserves special attention and protection from the Commission to ensure that this rate category remains accessible to all members of the public.

If the E-Stamp and Stamps.com proposals were approved, single-piece First-Class letters with similar cost characteristics would pay different rates depending solely on whether the mailer had paid an IBIP vendor a fee for the privilege of using the discount-qualifying service. This prospect poses a serious policy issue. Should customers preparing similar pieces of single-piece First-Class Mail pay different rates depending on whether they have paid a private vendor a fee? Stated differently, should customers preparing single-piece automation-compatible mail be barred from receiving a discount unless they subscribe to a private vendor's service, even though subscribing to the private vendor's service does not necessarily change the cost characteristics of their mail?

In Docket No. R97-1, the Commission favorably viewed my proposal to establish a lower rate for stamped cards compared to private post cards since mail-processing costs for stamped cards appear to be lower than mail-processing costs for private post cards. See PRC Op. R97-1 at 594, ¶ 6004. The Commission declined to approve the lower rate due to "uncertainty as to the extent of the difference in processing costs." *Id.* In proposing that discount, I recognized that some private post cards might be as inexpensive to process as stamped cards. Docket No. R97-1, Carlson Initial Brief at 1. However, in general, stamped cards are less expensive to process than private post cards, and I proposed a discount on this basis.

Under a stamped-card discount and an IBIP discount, a certain quantity of mail bearing similar cost characteristics would pay different rates. A key difference exists, however, between my proposed discount for stamped cards and the proposed discount for IBIP mail. With few barriers, under the stamped-card discount customers mailing low-cost private post cards could have purchased stamped cards instead. In contrast, customers mailing low-cost First-Class letters could access the IBIP discount *only by purchasing services from an IBIP vendor.*

Unless IBIP mail someday gains completely unique cost characteristics, IBIP mail should not receive a discount if customers preparing mail bearing cost characteristics similar to IBIP mail must purchase a service from a private vendor in order to be eligible to receive the discount. Such a discount would represent poor

public policy because it would restrict customers' access to single-piece First-Class Mail, the most fundamental of all postal services. The Commission should avoid recommending a discount that only customers subscribing to private, for-profit services could enjoy.

VI. EXPRESS MAIL

Express Mail Post Office to Addressee service guarantees delivery on either the next day or the second day. DMM §§ E500.1.2, E500.5.0, and E500.6.0. Customers are eligible for a postage refund if the Postal Service fails to meet the service guarantee. DMM § P014.5.0. Express Mail to every address is guaranteed for either next-day or second-day delivery. Tr. 21/8868.

Unfortunately, in some instances, the Postal Service accepts Express Mail from customers and guarantees next-day or second-day delivery even though the Postal Service should know at the time of acceptance that the Postal Service cannot deliver the item by the promised day and time. This problem typically arises in the following circumstances:

- The Express Mail item is destined to a post-office box for guaranteed delivery on a Sunday. Several factors may prevent the addressee from receiving the article on Sunday. First, the box lobby may not be open on Sundays. Second, even if the box lobby is open on Sundays, staff may not be present to allow the recipient to pick up the Express Mail item. Third, even if the box lobby is open on Sundays and postal employees are working in the office, the post office may not have a means by which customers can pick up mail on Sundays. See Tr. 21/8872–73. In all these cases, the Postal Service will guarantee the mailer delivery on Sunday, but the Postal Service will be unable to accomplish delivery on Sunday.
- The Express Mail item is destined to a rural-route address. Particularly if the article bears a rural address in the format RR 2, Box 100, the Postal Service may not deliver this Express Mail article on Sunday. Tr. 21/8874.
- Some post offices do not receive mail every day. If the Express Mail article is destined to a post office for guaranteed delivery on a day when the destination post office does not receive mail, the Express Mail article may not be delivered on the guaranteed delivery day. See Tr. 21/8869–70. Although the Postal Service suggests that local managers may institute exceptional transportation when service commitments require, *id.*, in an age of intense cost-cutting it is hard

to believe that the Postal Service would, for example, schedule an extra airplane flight to deliver an Express Mail item to an Alaskan village.

The Postal Service practice of guaranteeing delivery of Express Mail when on-time delivery is impossible is troubling. The Postal Service implicitly acknowledged the problem:

[C]ustomers are advised of the service commitment for their destination at the time of acceptance. Customers who are not satisfied with the service commitment for their destination presumably would choose not to use Express Mail and instead would make other arrangements for earlier delivery of their items, and would therefore suffer no unforeseen adverse consequences. Tr. 21/8831-32.

The problem is, the service commitment that the Postal Service communicates to customers may have no relation to the logistical feasibility of delivering the Express Mail item by the promised delivery time. Thus, if the customer is sending an Express Mail article to a post-office box located in a box lobby that is not open on Sundays, the mailer might *not* use Express Mail if he knew that the Postal Service could not possibly achieve the service commitment. Unfortunately, the Postal Service may not provide true and accurate information to the customer to allow the customer to make an informed decision. Stated differently, promising a customer delivery on Sunday may *induce* the customer to use Express Mail. As the Postal Service acknowledges, the customer might not use Express Mail if the customer needs delivery sooner than the Postal Service could promise. However, in practice, the Postal Service may induce a customer to use Express Mail by promising delivery that the Postal Service cannot possibly achieve. The Postal Service should not be committing to date-certain delivery when it cannot achieve date-certain delivery.

The Commission should recommend that the Postal Service develop a new class of Express Mail service guaranteeing delivery on the *next delivery day*. The Postal Service would build a database indicating the feasibility of delivery on particular days of the week for each destination ZIP Code. The new retail terminals and other on-line information systems, including the databases that representatives at 1-800-ASK-USPS use, would access this database to provide service commitments that the Postal Service actually could meet. Two examples will demonstrate how this service might work:

- On a Thursday, a customer in Massachusetts wants to send Express Mail to a community in Alaska that receives mail on Mondays, Wednesdays, and Fridays only. Presently, the Postal Service would guarantee delivery on Saturday, even though the Postal Service delivers mail to this community only on Mondays,

Wednesdays, and Fridays. This article likely would be delivered on Monday. With the new service class, the retail terminal at the post office in Massachusetts would indicate that the Express Mail article could be guaranteed for delivery on Monday, not Saturday. With full knowledge, the customer would have the option of guaranteeing delivery on the *next possible delivery day*, or the customer could make alternative delivery arrangements. This date-certain delivery may be valuable to mailers, but at least they would purchase Express Mail with full knowledge of the service level that they should expect.

- On a Friday, a customer wants to send Express Mail to a post-office box. Suppose next-day service is not available. Presently, the Postal Service would guarantee delivery on Sunday. Under the new system, when the window clerk entered the destination ZIP Code, the retail terminal would alert the clerk that certain addresses (e.g., particular box-number ranges or rural addresses) were not eligible for second-day delivery; instead, the customer could send the article via Express Mail for delivery on the *next possible delivery day* (Monday). Under the current system, a customer might spend \$11.75 to send documents via Express Mail, expecting two-day delivery on Sunday, but in reality the first bona fide delivery attempt would occur on Monday. This customer could have achieved similar delivery service with regular First-Class Mail if he had known in advance that Express Mail could not be delivered on Sunday. This new service class would avoid the problems that misleading information causes.

The Postal Service already provides information on post-office hours and locations at 1-800-ASK-USPS. If this information could be compiled nationwide, similar information could be compiled to allow postal employees to provide customers with realistic service commitments for Express Mail. The current system, which guarantees next-day or second-day delivery to every address, regardless of the feasibility of achieving the delivery commitment, may constitute false and misleading advertising. The Commission should encourage the Postal Service to develop a solution to this problem.